

REMARKS

Claims 19 to 47 are pending in the application. Claim 40 has been withdrawn from further consideration, claim 48 is hereby added. Claims 19-23, 29, 33-39, 41 and 42 are rejected under 35 USC § 103 as being unpatentable over Baumann et al. (US 3,616,970) and Gueret (US 6,033,143). In keeping with the foregoing amendment and the following argument, reconsideration is respectfully requested.

The rejection of claim 19 as unpatentable over Baumann in view of Gueret must be withdrawn. At the outset, the Gueret reference cannot possibly be considered analogous art to the apparatus claimed by the present invention. Referring to the MPEP, at Section 2141.01(a), "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *Citing In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992).

Here, no reasonable inventor concerned with the problem of creating a good foaming effect, and thus having to select a brush bristle length to accomplish good foaming, would ever have thought to look to a brush for applying liquid products such as "nail varnish, a liquid lip colour, a liquid foundation or a hair dye . . ." *See Gueret* at Col. 1, lines 5-8. To the contrary, an inventor faced with the problem of improving foaming in the applied product would never look to a reference in which foaming of the product would be undesirable. Simply put, one seeking to put on nail polish or other liquid cosmetics would not desire that the product would be foamy. This is alluded to in Gueret, at Col. 1, lines 18-23, which talk about "uniformity and gentleness of application," and which talk about a smooth and unstreaked finish. As one of skill in the art may well surmise, one could not have a smooth, unstreaked finish of nail polish if the nail polish is foamed and full of bubbles upon application. As a result, the Gueret reference is non-analogous art and cannot be relied upon to establish a *prima facie* case of obviousness. Consequently, claim 19 is in allowable form.

Moreover, Gueret – at the passages cited above – teaches directly away from the claimed invention. Specifically, Gueret expressly teaches bristles constructed so as to be conducive to a smooth application of a liquid product. Thus, there is no suggestion in the reference to modify the bristles of Gueret such that the bristles create foam. Such a

modification would presumably destroy the functionality of the reference. In either event, there can be no *prima facie* case of obviousness based even in part on Gueret, and thus the rejection is overcome. Accordingly, claim 19 is in allowable form.

The remaining claims except new claim 48 depend from claim 19, either directly or through intervening claims. Accordingly, these claims are also in allowable form.

New claim 48 positively recites a body including a reservoir for the product and including an orifice in flow communication with the reservoir, an application head comprising bristles fixed on a support, the application head in flow communication with the orifice of the body and the support arranged to permit the product to pass from the reservoir to the bristles, the application head adaptable to the body, and the bristles having lengths of between 5mm and 20mm and adapted to create a foaming effect upon application of the product to a user.

Such a construction is not taught or suggested by the cited art, either alone or in any proper combination.

In view of the foregoing, the above-identified application is in condition for allowance. In the event there is any remaining issue that the Examiner believes can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned attorney at (312) 474-6612.

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Respectfully submitted,


By _____

David C. Read

Registration No. 39,811

MARSHALL, GERSTEIN & BORUN LLP

233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicant